

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BARTELLS MATERIALS MANAGEMENT,
INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB NO. 87-58

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a notice and order of civil penalty for \$1,000 for purportedly violating regulations concerning removal of asbestos, at Sea-Tac Airport located in King County, came on for hearing before the Board on October 12, 1987 in Seattle, Washington. Seated for and as the Board were; Lawrence J. Faulk (Presiding), Wick Dufford and Judith A. Bendor. Pursuant to Chapter 43.21B.230 RCW, respondent elected a formal hearing. The matter was officially reported by Lesley Gray of Evergreen Court Reporting.

1 Respondent public agency appeared and was represented by its
2 attorney, Keith D. McGoffin. Bartells Materials Management, Inc., was
3 represented by Erik A. Jensen, General Manager.

4 Witnesses were sworn and testified. Exhibits were admitted and
5 examined. Argument was heard. From the testimony, evidence, and
6 contentions of the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 The Puget Sound Air Pollution Control Agency (PSAPCA) is an
10 activated air pollution control authority under terms of the state's
11 Clean Air Act, empowered to monitor and enforce emissions standards
12 for hazardous air pollutants, including work practices for asbestos
13 removal.

14 PSAPCA has filed with the Board certified copies of its
15 Regulations 1 and 2, of which we take official notice.

16 II

17 Bartells Materials Management, Inc., is a maintenance contractor
18 located in Renton, Washington. They specialize in maintenance of
19 commercial buildings. This particular case involves a contract to
20 vacuum heating vents and ducts in the bagwell at Seattle-Tacoma
21 International Airport in order to remove any asbestos-containing
22 material that had fallen from the ceiling and supporting beams.

III

On October 16, 1986, Michael T. Rock, Project Manager for this asbestos project, completed and filed with PSAPCA a notice of intent to remove and encapsulate asbestos at Sea-Tac Airport. The notice advised of the proposed vacuuming of dust from ducts in 5,000 square feet of the bagwell area of the main terminal, between October 16 and the end of the year.

IV

On the morning of December 9, 1986, while completing an anonymous complaint inspection at Sea-Tac International Airport a PSAPCA inspector observed a "scissors lift" parked in the north bagwell area of Sea-Tac Airport approximately 15 feet west of column R5.6P against the west wall of the bagwell area. The "scissors lift" was in a down position enabling the inspector to see the floor of the lift. What appeared to be dry and friable asbestos material was observed on the floor of the "scissors lift". Nearby, the inspector also observed a "manlift" parked area adjacent to bagwell station No. 6. The metal grated floor of the "manlift" appeared to contain dry, friable asbestos material on the grate and stuck tightly in the holes of the grate. In addition, the inspector observed asbestos material on the floor of the bagwell where the lift was parked. The inspector then telephoned appellant company and talked to Mr. Mike Rock. Mr. Rock confirmed that the two units, namely the "scissors lift" and the

1 "manlift" had been utilized by appellant company during their contract
2 for vacuuming of the loose asbestos material from the tops of the HVAC
3 systems and ducts. The inspector took samples of the debris and
4 photographs of the area. The samples were subsequently sent to the
5 Department of Ecology (DOE) laboratory for analysis.

6 Following the incident appellant company took immediate steps to
7 clean up all identified residue on the equipment and in the vicinity.
8 When PSAPCA's inspector conducted a follow-up inspection that
9 afternoon, the machines and area were found to be clear of the debris
10 earlier observed.

11 V

12 On December 19, 1986, the DOE laboratory report was received which
13 showed that the samples collected by the PSAPCA inspector contained
14 chrysotile asbestos, ranging from 5% to 20%.

15 On December 29, 1986, PSAPCA mailed two separate notices of
16 violation to Bartells Materials Management, Inc., for alleged
17 violation of WAC 173-400-075 (Emission Standards for Sources Emitting
18 Hazardous Air Pollutants) and Sections 10.04(b)(2)(iii)(A)(B)(C) and
19 10.05(b)(1)(i)(IV) of PSAPCA Regulation I (Removal and Encapsulation
20 of Asbestos Material). The notices gave the date and time of
21 violation as December 9, 1986, at 9:57 a.m.

22 On February 20, 1987, PSAPCA mailed to appellant company a Notice
23 and Order of Civil Penalty (No. 6639). The Notice assessed a penalty
24 of \$1,000 for the same six alleged violations which are listed
25

26 FINAL FINDINGS OF FACT,
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separately on the earlier-issued notices of violation. The notice was received February 23, 1987. Feeling aggrieved by the penalty, the company filed an appeal with this Board, received March 18, 1987.

VI

Bartells Materials Management, Inc., operates in a five state area, and after over 200 jobs in the 18 months since the company was formed, this is the first citation they have received from a regulatory agency.

VII

The company maintains that the asbestos debris discovered at the "scissors lift" and "manlift" by PSAPCA's inspector was not the result of any act or omission by Bartell's.

They point out that the old asbestos coating of the bagwell ceiling and supporting beams is subject to vibration day and night from overhead baggage conveyor belts and large tow vehicles moving baggage. The continual vibration causes asbestos to flake off and fall on adjacent structures, duct work, and the floor. Bartell's was working the graveyard shift from 12 midnight to 6:00 a.m. But, here the time of violation was noted at 9:57 a.m., almost four hours after the company's workers had gone home, during which time the materials could have fallen.

The company notes that their work plan calls for sealing cleaned areas following vacuuming with a solution of "Vibresele" and water to

1 lock down any microscopic fibers which might remain. This process,
2 they maintain, is routinely followed. Here there was no evidence of
3 sealant use in the areas where the inspector found the
4 asbestos-containing fragments.

5 On the shift the night of December 9, 1986, Bartell's personnel
6 were working at the opposite end of the bagwell from where PSAPCA's
7 inspector found the debris. The work they performed that night did
8 not require the use of any lifts. Indeed, neither the "scissors lift"
9 nor the "manlift" had been used by Bartell's for two weeks previous to
10 that night.

11 The incident in question was the only incident of its type during
12 Bartell's entire time on the job at Sea-Tac.

13 VIII

14 Under all the facts and circumstances we are not persuaded that
15 the existence of the asbestos fragments in the time and place they
16 were found on December 9, 1986, is attributable to any act or omission
17 of Bartell's.

18 IX

19 Any Conclusion of Law hereafter determined to be a Finding of Fact
20 is hereby adopted as such.

21 From these Facts, the Board comes to these
22
23
24
25

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters.
Chapters 70.94 and 43.21B RCW.

II

We conclude that respondent agency has not carried their burden of
proof for any of the alleged violations.

III

Any Finding of Fact which is deemed a Conclusion of Law is hereby
adopted as such.

From these Conclusions, the Board enters this

ORDER

The Notice and Order of Civil Penalty (No. 6639) is vacated.

DONE this 28th day of March, 1988.

POLLUTION CONTROL HEARINGS BOARD

Lawrence J. Faulk 3/25/88
LAWRENCE J. FAULK, Presiding

Wick Dufford
WICK DUFFORD, Chairman

Judith A. Bendor
JUDITH A. BENDOR, Member

I certify that I have let a copy of this hearing to the public.
Filed for Public Inspection
3/28/88
Judy M. Sarn

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